

# Draft topic paper: Natural environment

**January 2022**

To accompany Guildford borough Submission Local Plan: Development Management Policies



**GUILDFORD  
BOROUGH**

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Draft

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## 1. Purpose of this topic paper

- 1.1 This topic paper sets out the approach taken in developing the strategy for biodiversity within the Guildford borough Local Plan: Development Management Policies (LPDMP). The topic paper looks at the relevant national and local guidance that informed the Submission LPDMP. Topic papers explain how the strategy has developed, in addition to the information, evidence and feedback that have informed the choices made in formulating policies.
- 1.2 The intention is to provide background information; topic papers do not contain any policies, proposals or site allocations. This topic paper has been produced to aid understanding of the policies and to ultimately accompany the Submission LPDMP to the Secretary of State for examination.
- 1.3 The main areas covered by this topic paper are:
  - protecting important biodiversity features;
  - reversing the decline in and improving biodiversity; and
  - protecting and improving water quality.
- 1.4 This topic paper explains the development of the following LPDMP policies.
  - P6/P7: Biodiversity in New Developments.
  - P8/P9: Protecting Important Habitats and Species.
  - P12: Water Quality, Waterbodies and Riparian Corridors.

## 2. Policy context

### National context

#### Biodiversity decline

- 2.1 Biodiversity is declining globally at a rate unprecedented in human history, with around one million animal and plant species threatened with extinction and an extinction rate that may be 100 times higher than that 'normally' experienced over evolutionary time. The loss of biodiversity has serious implications for human society, which depends on a healthy natural environment to sustain human life, but also for a functioning economy and healthy society.
- 2.2 In the UK, human-driven land use changes have led to loss and fragmentation of natural and seminatural habitats. Combined with other pressures, such as development, climate change, pollution in the air and in watercourses, the impact on nature from human activity has been significant. Across the UK generally, the abundance and distribution of species has declined over recent decades with many species experiencing rapid population contractions. Greater than one in seven wildlife species have become extinct or threatened to the point of extinction in the last 40 years.
- 2.3 It is increasingly apparent that the UK's biodiversity decline is so severe that heightened efforts to bring about recovery (as opposed to merely arresting loss) are essential. This is reflected nationally where the focus has shifted from protecting to

restoration and enhancement. This position is set out in existing and emerging legislation and in national policy and strategies.

### **Legislation and strategy**

2.4 The severe and continuing impoverishment of biodiversity across the UK is recognised nationally and the commitment to protecting biodiversity and reversing the decline is set out in legislation and national policy and strategies:

- The UK is a signatory to the Bern Convention on the Conservation of European Wildlife and Natural Habitats, which is a binding international agreement that protects the natural heritage of Europe and some African countries, with a focus on protecting natural habitats and endangered species.
- The Natural Environment and Rural Communities (NERC) Act 2006 places a statutory duty on public authorities in England to conserve biodiversity when exercising their normal functions, such as policy and decision making.
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 incorporate the provisions of the Water Framework Directive into UK law, requiring all surface waterbodies to achieve 'good' ecological and chemical status (or 'good' ecological potential for heavily modified and artificial waterbodies), and for all groundwater bodies to achieve 'good' quantitative and chemical status by 2027 at the latest.
- The Thames river basin district river basin management plan (Environment Agency, updated 2015) is the UK's response to the Water Framework Directive for the Thames river basin. Its main purpose is to prevent water bodies deteriorating further and bring about improvement by providing a baseline status for water bodies, identifying water bodies that have specific purposes (e.g. drinking water, bathing, habitats), setting out statutory objectives and identifying a programme of measures for achieving those objectives.
- The forthcoming Environment Act is expected to introduce: a mandatory requirement for developments (except those exempted) to achieve a minimum 10% net gain in biodiversity; conservation covenants that will secure land used for biodiversity gains; targets for preserving water resources and restoring wildlife; and Local Nature Recovery Strategies which will coordinate nature recovery at the local level.
- Biodiversity 2020: A strategy for England's wildlife and ecosystem services (Defra 2011) sets plans to address threats to 'protected' and 'priority' species and to 'priority habitats'. The strategy is due to be updated with new local requirements after the strategy and targets have been reviewed.
- A Green Future: Our 25 Year Plan to Improve the Environment (Defra 2018) aims to regain and retain good health for the environment through a range of actions, including environmental net gains through development. Goals include clean air and water, plentiful water, thriving plants and wildlife, and reducing hazards such as flooding and drought. The NPPG (Natural Environment, paragraph 10 Reference ID: 8-010-20190721) states that the commitments within the 25 year plan should be considered when considering the opportunities to conserve and enhance biodiversity and geodiversity and contribute to habitat connectivity in new developments.

## National Planning Policy Framework

- 2.5 The National Planning Policy Framework (NPPF) sets out the overarching planning policy framework, supported by National Planning Practice Guidance (NPPG). Policies must be positively prepared, justified, effective and consistent with national policy. Local Plans should be consistent with national policy as set out in the NPPF and should have regard to national planning guidance set out in the NPPG.
- 2.6 Achieving sustainable development means the planning system has 3 overarching objectives, set out in NPPF paragraphs 7 and 8. The objectives cover social progress, economic well-being and environmental protection and these are described as interdependent and mutually supportive. Opportunities should be taken to secure gains across each of them. Paragraph 9 confirms the objectives should be delivered through the preparation and implementation of [local] plans.
- 2.7 Paragraph 7 extends the objective of environmental protection to include enhancing the natural environment and improving biodiversity. Paragraph 11a clarifies that this requirement applies to plan-making where it states, “all plans should promote a sustainable pattern of development that seeks to... improve the environment”.
- 2.8 “Chapter 15: Conserving and enhancing the natural environment” contains the majority of directly relevant policy. It states planning policies should:
- contribute to and enhance the natural and local environment (174);
  - protect and enhance sites of biodiversity value (174 a);
  - minimise impacts on and provide net gains for biodiversity (174 d);
  - including by establishing coherent ecological networks that are more resilient to current and future pressures (174 d); and
  - development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans (174 e).
- 2.9 The subsection of chapter 15 entitled “Habitats and biodiversity” requires the following measures.
- Plans to identify map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation (179 a).
  - Plans to promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity (179 b).
  - Refuse developments that would significantly harm biodiversity after following the mitigation hierarchy (180 a).
  - Refuse development that would harm a SSSI unless the benefits of the development in the location proposed clearly outweigh its likely impact on the SSSI features and the national network of SSSIs (180 b).

- Refuse developments that would result in the loss or deterioration of irreplaceable habitats except in wholly exceptional circumstances and where suitable compensation will be provided (180 c).
  - Support development whose primary objective is to conserve or enhance biodiversity (180 d).
  - Opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate (180 d).
  - Apply the same protection as for habitats sites to potential SPA and SAC sites, listed or proposed RAMSAR sites, and sites identified or required for compensatory measures for impacts on those sites or habitats sites (181 and 182).
- 2.10 The subsection entitled “Ground conditions and pollution” has particular relevance for the water environment. It places the following requirements.
- Planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on... the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. This includes limiting the impact of light pollution from artificial light on... nature conservation (paragraph 185).
  - Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants (paragraph 186).
- 2.11 “Chapter 11: Making effective use of land” paragraph 119 states “Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses”. Paragraph 120 adds “Planning policies and decisions should... encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains - such as developments that would enable new habitat creation or improve public access to the countryside” and “recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation...”.
- 2.12 “Chapter 14: Meeting the challenge of climate change, flooding and coastal change” includes paragraph 153 which states “Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity...” and paragraph 154 which states “New development should be planned for in ways that... avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure...”
- 2.13 “Chapter 3: Plan making” paragraph 25 states “Strategic policy-making authorities should... engage with... relevant bodies including... Local Nature Partnerships [and] county councils”.

- 2.14 “Chapter 8: Promoting healthy and safe communities” under “Open space and recreation” at paragraph 98 states high quality open spaces can deliver wider benefits for nature and support efforts to address climate change.
- 2.15 The NPPF glossary defines green infrastructure as “A network of multi-functional green and blue spaces and other natural features, urban and rural, which is capable of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity.”

### **Conclusion**

- 2.16 The key points of the above are that the NPPF requires the protection of the environment and valuable environmental features, but it makes it clear that merely protecting the environment is not adequate and that it must also be enhanced, improved and restored to deliver a net gain for biodiversity. The approach to net gains should not override protections for important biodiversity features and the avoidance/reduction of harm should be prioritised over improvement and restoration. This effectively makes the ecology mitigation hierarchy a planning principle.
- 2.17 Priority habitats and species and ecological networks should be targeted for conservation, restoration and enhancement and improvements to air and water quality should be sought in order to contribute to compliance with limit values and national objectives for pollutants. Water stocks should also be preserved. Ecological resilience should be improved with adaptation to climate change a consideration and green infrastructure should make best use of land by delivering multifunctional benefits notably for wildlife, recreation, flooding and climate change adaptation.
- 2.18 The NPPF requires plans to “pursue opportunities for securing measurable net gains for biodiversity”. The NPPF was updated in 2021, long after the Environment Bill was drafted, so the intention is for plans to incorporate net gain policy rather than waiting for national legislation or policy to implement the same.

### **Local context**

#### **Biodiversity in Surrey**

- 2.19 Paragraph 9 of the NPPF states “Planning policies... should play an active role in guiding development towards sustainable solutions [using the NPPF definition of sustainable development], but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.” As a result it is necessary to consider the local context.
- 2.20 Surrey is a comparatively biodiverse county and Guildford is one of its most biodiverse districts. Guildford borough is home to areas of internationally and nationally restricted habitats of importance such as lowland heath, and chalk and neutral grassland, and it has a large number of sites designated nationally and locally for their nature conservation importance.
- 2.21 This natural richness is an asset that provides many direct benefits for human health and wellbeing, and for the local economy through leisure, tourism and agriculture, and more broadly from the ecosystem services that support all economic activities and sustain life. Biodiversity and landscapes are inextricably linked, with features

such as woodlands, shaws and hedgerows integral to the character of rural areas. At a global scale, ecosystems and soils play an important role in carbon sequestration so help to mitigate climate change.

- 2.22 However, the county has historically suffered a high degree of habitat loss/fragmentation and routine wildlife persecution, compounded by more modern and ongoing impacts associated with intensification of agriculture and eutrophication of soils and water. As a result, the decline in local biodiversity is even more pronounced than the national decline. The Surrey Nature Partnership's (SyNP) report, "The State of Surrey's Nature" followed closely the publication of the national State of Nature 2016 report which enabled direct comparisons between the county and national declines. The SyNP report concluded the likely local extinction of an estimated 11.5% (or around 1 in 9) species native to the county since 1985, with a further 4.4% threatened with local extinction. In contrast the national extinction rate in 2016 was concluded at 2% extinct and 13% threatened.

#### **Local Plan: Strategy and Sites 2015-2034**

- 2.23 The Local Plan: Strategy and Sites 2015-2034 (LPSS) was adopted in May 2019. It set the strategic policies for the borough (including site allocations) and was intended to be followed by the LPDMP which would provide detailed development management policies that could flesh out strategic policies. The LPSS includes the following policies
- ID4: Green and Blue Infrastructure;
  - P4: Flooding, Flood Risk and Groundwater Protection Zones; and
  - P5: Thames Basin Heaths Special Protection Area.
- 2.24 These policies were drafted primarily between 2013 and 2017 and were then subject to further modifications through the LPSS examination. During this period and since adoption, a strategic approach for biodiversity restoration in Surrey has continued to emerge, and national strategies have also been developed.

#### ID4: Green and Blue Infrastructure

- 2.25 ID4 sets a high-level requirement to maintain, conserve and enhance biodiversity by seeking opportunities for habitat restoration and creation and requires new development to aim to deliver gains in biodiversity where appropriate. It refers to the Surrey Nature Partnership (SyNP) Biodiversity Opportunity Areas (BOAs, see below) and requires the biodiversity measures delivered by developments within or adjacent to a BOA to support the BOA's objectives.
- 2.26 ID4 protects the hierarchy of nationally and locally designated sites in line with the NPPF.
- 2.27 Regarding the water environment, ID4:
- requires the ecological, landscape and recreational value of watercourses to be protected and enhanced,
  - prevents adverse impacts on the functions, catchments and settings of watercourses,

- requires proposals to support the achievement of the Water Framework Directive (WFD) objectives and to follow guidance from the Environment Agency on implementation of the River Basin Management Plan and any local catchment plans; and
- avoid any downstream adverse impact on water quality objectives.

*Policy P4: Flooding, flood risk and groundwater protection zones*

- 2.28 Policy P4 deals with flooding matters except at paragraph 8 where it protects groundwater by requiring development within Groundwater Source Protection Zones and Principal Aquifers to avoid an adverse impact on the quality of groundwater and maintenance of a public water supply.

*Policy P5: Thames Basin Heaths Special Protection Area*

- 2.29 Policy P5 protects the Thames Basin Heaths Special Protection Area (SPA) from direct adverse impacts and from indirect impacts associated with an increase in the number of visitors as a result of new housing.

**Surrey Nature Partnership and Biodiversity Opportunity Areas**

- 2.30 The Surrey Nature Partnership (SyNP) is the Local Nature Partnership designated by the Secretary of State for Environment, Food and Rural Affairs for the purpose of protecting and improving the natural environment in Surrey.
- 2.31 The SyNP has developed a strategic approach to biodiversity based around Biodiversity Opportunity Areas (BOAs). BOAs are areas where there are concentrations of recognised sites of biodiversity importance, both statutory and non-statutory, and they represent areas where the maintenance, restoration and creation of priority habitats will be most effective in achieving the aim of conserving and enhancing biodiversity at a landscape (strategic) scale. This provides an ecosystem approach to nature conservation which extends across and beyond the county.
- 2.32 The SyNP document 'Biodiversity Opportunity Areas: The basis for realising Surrey's ecological network' (SyNP 2019) sets out the extent of the BOAs and a policy statement for each which identifies priority species and habitats. These policy statements align with the national outcomes set out in Biodiversity 2020.
- 2.33 The NPPF requires plans to identify and map the areas identified by national and local partnerships for habitat management, enhancement, restoration or creation, which includes the BOAs. Policy ID4 identifies and maps the SyNP BOAs within the supporting text.
- 2.34 Policy ID4 implements the SyNP approach primarily in the following two ways.
- It states that the Council will seek opportunities for habitat restoration and creation, particularly within and adjacent to these BOAs. The Council's Parks and Countryside service manages the Council's own estate in ways consistent with the BOA approach and, as the supporting text in Policy ID4 states, new SANGs promoted through the Local Plan are expected to make a very significant contribution in this regard. The Council will design and manage its SANGs to support the objectives of the BOA they are in or adjacent to where possible and appropriate.

- It requires proposals for development to deliver net gains in biodiversity that support the BOA objectives where possible. This includes proposals for built development, new open space and SANGs provided by private landowners.

### **River Basin Management Plan for the Thames river basin district**

- 2.35 The River Basin Management Plan (RBMP) for the Thames river basin district sets out how the objectives of the Water Framework Directive (incorporated into UK law by the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017) will be achieved.

### **Other local strategies and action plans**

- 2.36 *The draft River Wey Catchment Plan* (2018, Wey Landscape Partnership) implements a catchment-based approach to deliver cross cutting improvements to 31 river waterbodies with the aim of providing a healthy and diverse water environment and to meet the standards set by the Water Framework Directive. It intends for restoration, enhancement and improvement schemes to seek to deliver 'multiple benefits', environmental, social and economic wherever possible. It identifies key areas for action for each waterbody and potential interventions.
- 2.37 *The Basingstoke Canal Strategy 2014-2019* (Basingstoke Canal Authority) aims to create a thriving natural environment for wildlife and public enjoyment, and a vibrant recreation and heritage resource along the canal. This includes the strategic priorities of improving biodiversity and landscape to achieve SSSI target condition and improving the supply of water to sustain navigation and biodiversity.
- 2.38 *The Surrey Hills AONB Management Plan 2020-2025* (Surrey Hills AONB Board) includes a section of aims and policy objectives covering biodiversity and water resources. It sets the aim of conserving, enhancing and restoring designated sites, important habitats and to improve ecological functioning across the AONB through habitat creation and wildlife corridors. In particular, it expects applicants for planning permission to deliver biodiversity gains. It supports measures to meet Water Framework Directive targets for river catchments, to conserve and enhance the ecological value of river landscapes, wetland habitats and water quality.
- 2.39 *A Vision for Guildford Borough's Countryside Sites 2017 - 2027* (Guildford Borough Council) provides a framework for proactive management of Guildford's countryside and the development of appropriate action plans for the management of sites owned by the Council, but acknowledges the need to control off-site influences that affect GBC's Countryside sites. It sets a number of objectives including creating better, bigger and more connected wildlife habitat networks, habitats that are enhanced in line with landscape character and habitat types in order to create a resilient ecological network, and a clean and ecologically functioning river Wey and catchment. The document takes a natural capital and environmental services approach to deliver the vision set out in the Surrey Nature Partnership's 'Naturally Richer: A Natural Capital Investment Strategy for Surrey'.
- 2.40 *Guildford Borough Council Air Quality Strategy 2017-2022* (Guildford Borough Council) identifies the key air quality issues within the borough and an approach to maintaining and improving air quality. It includes an Action Plan that sets out the

actions to be taken to help reduce concentrations of air pollutants and exposure to air pollution. Whilst primarily focused on human health, the strategy has relevance for the health of the natural environment, and conversely appropriate habitat works can make a contribution to improving air quality.

### **Corporate plan**

- 2.41 The Guildford Corporate Plan 2021-2025 includes the priority of protecting and enhancing biodiversity and the natural environment.

### **Climate emergency**

- 2.42 On 23 July 2019, the Council passed a resolution declaring a climate emergency. Habitats play an important role as carbon sinks and can help reduce net carbon emissions. Conversely, land use change can exacerbate carbon emissions when carbon sinks are removed.

### **Neighbourhood plans**

- 2.43 Neighbourhood planning enables Neighbourhood Forums and Parish Councils to develop a plan setting out a vision and planning policies for their designated neighbourhood area. Those 'Neighbourhood Plans' which are successfully adopted will form part of the statutory development plan for the area that they cover. Where a Neighbourhood Plan is adopted or emerging before an up-to-date Local Plan is in place, the local planning authority should take it into account when preparing Local Plan policies.
- 2.44 There are presently seven adopted neighbourhood plans in the borough, and an eighth will soon be subject to a referendum. Two other neighbourhood areas are at the plan drafting stage. All the adopted neighbourhood plans set out protections for specific undeveloped sites, with some designating wildlife corridors and stepping-stones. These policies draw on local knowledge and evidence and, once the neighbourhood plan is adopted, form part of the Development Plan.

## **3. Appraisal and justification for policy approach**

- 3.1 The Regulation 18 LPDMP Issues and Preferred Options (the "Preferred Options document") included the following relevant preferred options:
- Policy P6: Biodiversity in New Developments;
  - Policy P7: Biodiversity Net Gain;
  - Policy P8: Woodland, Trees, Hedgerows and Irreplaceable Habitats;
  - Policy P9: Priority Species and Habitats on Undesignated Sites; and
  - Policy P12: Water Resources and Water Quality.
- 3.2 Following the consultation on the Preferred Options, policies P6 and P7 were merged into P6/P7: Biodiversity in New Developments and policies P8 and P9 were merged into P8/P9: Protecting Important Habitats and Species. Policy P12 was expanded to include further policy covering watercourses and renamed P12: Water Quality, Waterbodies and Riparian Corridors.

- 3.3 This section sets out the changes that were made after the regulation 18 consultation on the Preferred Options document and does not repeat the whole of the original justification for those regulation 18 preferred options

### **Policy P6/P7: Biodiversity in New Developments**

- 3.4 Policy P6/P7: Biodiversity in New Developments was created through the merging of the preferred options P6 and P7. This was done because both options dealt with the delivery of biodiversity in new development (rather than the protection of important biodiversity features) and because some key concepts, such as the mitigation hierarchy and target species and habitats, apply to both options. Additionally, the provisions of preferred option P6 should guide the delivery of biodiversity net gain (BNG) in preferred option P7.
- 3.5 The final section of preferred option P6 entitled “Sites that include or are adjacent to sensitive habitats” (comprised of paragraphs 9 and 10) was not carried over to policy P6/P7. Paragraph 9 dealt with the protection of important biodiversity features on development sites so is included in Policy P8/P9: Protecting Important Habitats and Species because it more naturally corresponds with that policy.
- 3.6 The Environment Agency suggested a new policy on watercourses and proposed some wording. New policy clauses were drafted in response to their comments and then merged with preferred option P12 to create policy P12: Water Quality, Waterbodies and Riparian Corridors. Paragraph 10 of the section “Sites that include or are adjacent to sensitive habitats” in preferred option P6 was moved to this new policy because it deals with watercourses.
- 3.7 The following text sets out how key elements of policy P6/P7 was developed.

#### **General principles**

##### Paragraph 1

- 3.8 Historically, biodiversity has been a consideration in the planning system alongside a number of other matters, but has often not been seen as a priority. Planning policy has focused primarily on protecting important designated habitats and species. This is no longer an acceptable approach given a) the increased focus on biodiversity nationally and the importance accorded to the topic, b) the change in approach nationally from preservation to restoration and enhancement, and c) the particularly acute and continuing biodiversity decline in Surrey and the severe implications for the economy, society and environment if a recovery is not realised.
- 3.9 Policy ID4 includes a requirement that “New development should aim to deliver gains in biodiversity where appropriate.” However, given the increased importance accorded to biodiversity in national policy and strategy and the emergence of the national BNG approach, it is considered that this wording is not sufficiently strong. Notably, the NPPF 2012 (under which ID4 was produced) called for the “planning system” to “contribute to and enhance the natural and local environment” by “providing net gains in biodiversity where possible”, while the NPPF 2021 instead states “Planning policies and decisions should contribute to and enhance the natural and local environment by... minimising impacts on and providing net gains for

biodiversity...”. This change makes it clear that plans (rather than the planning system) are responsible for restoring the natural environment and removes the “where possible” qualifier.

- 3.10 Preferred option P6 sets out a proposal to require new developments to “prioritise biodiversity in their proposals as a general principle.” The word prioritise was not included in policy P6/P7 following the regulation 18 consultation as some respondents pointed out that the planning system has to balance a number of competing needs and it would not always be possible to prioritise biodiversity over all other considerations. This was not the intention of the preferred option (the intention was to ensure that biodiversity receives a higher level of attention in planning proposals) so the wording was changed to refer to maximum gain.
- 3.11 A requirement to follow the mitigation hierarchy was added to this paragraph when policies P6 and P7 were merged. The mitigation hierarchy had previously been incorporated in preferred option P7: Biodiversity Net Gains, but it was reasoned that the hierarchy should apply to all biodiversity measures so should be incorporated at the start of the policy.
- 3.12 The first paragraph clarifies that these requirements apply to all developments including those that are exempt from minimum BNG requirements. This is because it is considered appropriate that all development plays a part in reversing the biodiversity decline through good design and careful choices in planting and landscaping, and the severity of the situation warrants an approach where all developments make a contribution.

#### Paragraph 2

- 3.13 LPSS Policy ID4, paragraph 2, states “Where proposals fall within or adjacent to a BOA, biodiversity measures should support that BOA’s objectives. The SPD will set out guidance on how this can be achieved.”
- 3.14 Paragraph 2 supplements ID4’s high level support for the BOAs by setting out in policy where the BOA objectives can be found (in the BOA policy statements), clarifying that each BOA’s priority habitats and species must be protected and enhanced and that habitat connectivity across and/or into the BOA must be improved.

#### Paragraph 3

- 3.15 The BOAs are a strategic, landscape scale approach to biodiversity and should form the overarching framework for biodiversity protection and enhancement. While BOAs are the primary source of information regarding the sorts of biodiversity measures that should be included in new development, they should not be the sole source. This is particularly important given that not all of the borough is covered by a BOA, including all urban areas. Additionally, within BOAs the biodiversity measures that deliver the best outcomes may not always be the same across the whole of the BOA.
- 3.16 Since the LPSS was drafted in 2017, a number of national strategies have emerged that can play a valuable role in the restoration of nature, such as the ‘B-lines’ national insect pathway strategy which in 2017 did not cover Surrey. As a result, preferred option P6 proposed a requirement to take other strategies into account. Listed among

these were the Local Nature Recovery Strategies proposed in the Environment Bill which were added to future proof the policy. The supporting text for policy P6/P7 lists the sorts of strategies that should be taken into account but does not present a closed list as work in this area is evolving quickly. This requirement was carried through to the regulation 19 LPDMP.

#### Paragraph 4

- 3.17 Paragraph 4 sets out a requirement for major development proposals to set out plans for long term management and maintenance of on-site biodiversity. This responded to a suggestion for such a requirement within the Environment Agency's representation at regulation 18. The threshold was set at major development as this was considered achievable and reasonable.

#### **Planting schemes, landscaping and water management**

- 3.18 Paragraph 5 requires open land of various types within development sites to achieve the best biodiversity benefit by following the BOA policy statements and other strategies. Open land in new development represents an important opportunity to restore or reinforce local biodiversity and in many cases this can be achieved simply by planting appropriate native species in place of ornamental species.
- 3.19 Layout can affect the biodiversity value of a site, particularly where tree planting is involved. Grouping trees together to create connected canopies provides greater biodiversity benefit than the same number of trees planted separately. Accordingly, the benefits of trees to biodiversity should be measured in terms of canopy area rather than simply the number of trees. The Committee on Climate Change recently set a target for forest cover to increase nationally from 13 to 17%<sup>1</sup> as a carbon sequestration measure to mitigate climate change.
- 3.20 There is mounting evidence that natural spaces, and particularly areas of canopy cover, are beneficial for mental and physical health. Urban tree canopy cover on its own has been indirectly linked to reduction in obesity, diabetes, high blood pressure and asthma<sup>2</sup>.
- 3.21 As a result, paragraph 6 expects the retention of tree canopies and directs new planting to focus on the extension or creation of tree canopies (rather than planting the same number of trees dispersed throughout the site). However, it includes a caveat that prevents this where it would harm sensitive species and habitats, which accords with SyNP guidance<sup>3</sup>.
- 3.22 Following the preferred option consultation, the final sentence of the paragraph on trees, which stated "It is expected that UK sourced native species will be used, unless imported strains would offer greater resilience" was moved to a new

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<sup>1</sup> Committee on Climate Change (CCC) (2019) Net Zero – The UK's contribution to stopping global warming. Available online at: <https://www.theccc.org.uk/publication/net-zero-the-uks-contribution-to-stopping-global-warming/>.

<sup>2</sup> Multiple health benefits of urban tree canopy: The mounting evidence for a green prescription (Ulmer et al., 2014) <https://doi.org/10.1016/j.healthplace.2016.08.011>.

<sup>3</sup> Tree planting for climate change mitigation in Surrey: a Surrey Nature Partnership Position Statement (SyNP 2020).

paragraph, creating paragraph 7 of policy P6/P7. This was done because the requirement should apply to all planting and not just trees.

### **Site design**

- 3.23 In order to deliver biodiverse developments, opportunities for biodiversity must be designed-in from the outset. As well as creating the right habitats through appropriate planting, it is important that connectivity is preserved or enhanced in order for those habitats to provide maximum benefit – habitats can only support wildlife if they are accessible, and habitats themselves are more likely to thrive where they are connected to a wider ecosystem. As a result, paragraph 9 requires the design of sites to provide appropriate links between new and existing habitats and to avoid fragmentation and isolation.
- 3.24 Following the preferred options consultation, the final sentence of this paragraph, which required sites to avoid facilitating the spread of invasive species, was removed to its own paragraph (paragraph 10). Additional text was added to require the eradication or control of invasive species in order to align the policy with legislation and because some invasive species represent a risk to human health. A further requirement was added for planting schemes to exclude invasive plants as further research showed that some invasive plants are widely available commercially and their use would go against strategies and guidance published by nature organisations such as Plant Life. Given this situation and the evidently crucial need to improve the ecological health of the borough, it is considered appropriate to seek to limit the use of invasive species through policy.
- 3.25 Paragraph 11 reflects paragraph 8 of preferred option P6 by expecting schemes to include measures that promote a sense of community ownership of habitats and green spaces, with the exception that it is presented as an expectation for major developments and only encouraged for minor developments. Such measures cover a broad range, and smaller measures such as interpretation boards could be included at almost any scale of scheme. However, it is acknowledged that for smaller developments there is a lower likelihood that it will contain a habitat or feature of sufficient scale or importance so this is encouraged rather than expected or required. On larger sites there is a much greater likelihood that interpretation boards and other measures can be applied but there may still be instances where this would not be feasible, so this is presented as an expectation rather than a requirement.

### **Biodiversity Net Gain**

- 3.26 In December 2018, the Government launched a consultation on proposals to introduce mandatory requirements for developments in England to deliver a minimum BNG. The government subsequently announced that it would take the proposals forward and incorporate them into the Environment Bill. Following the 2019 general election the Bill was relaunched and has subsequently been made with more or less the same proposals as set out in the consultation. The key measure is that all developments, except some exempted developments, will have to achieve BNG of at least 10% measured using Defra's Biodiversity Metric ('the metric') to measure gains or losses. The commencement date for this has not yet been announced and will be subject to future regulations.

- 3.27 Under national BNG approach, developers can create a BNG by improving the extent, distinctiveness or condition of habitats on site, especially where these have strategic significance. If the required BNG cannot be achieved on-site through avoidance of harm and on-site enhancement, the national approach allows for a last resort option of habitat works in a local site beyond the development (as an off-site 'offset'), delivered either directly by the developer or by paying into a third party's habitat enhancement project.

Additionality

- 3.28 Fundamental to the national BNG approach is the principle of additionality. The BNG target and the Defra methodology do not replace the mitigation hierarchy or compensation and mitigation regimes – they are additional to them. Alongside this, BNG improvements must be additional to habitat works that would have been undertaken without a BNG requirement due to legal or policy obligations for compensation or mitigation as a result of impacts on protected habitats.

- 3.29 The NPPG (Natural Environment, paragraph 24) confirms this where it states:

*Biodiversity net gain complements and works with the biodiversity mitigation hierarchy set out in NPPF paragraph 175a. It does not override the protection for designated sites, protected or priority species and irreplaceable or priority habitats set out in the NPPF. Local planning authorities need to ensure that habitat improvement will be a genuine additional benefit, and go further than measures already required to implement a compensation strategy.*

- 3.30 The Parliamentary Office of Science and Technology produced a note on Net Gain in October 2019 which clarified:

*A key principle in both the Defra and industry principles is that net gains are additional to conservation measures that would have occurred regardless; to ensure good practice and avoid double counting. It is also a core concept in offsetting; gains from offsets should not be counted towards national environmental goals, as they are primarily intended to address the impacts of the development rather than the state of a landscape as a whole.*

- 3.31 [The Biodiversity Metric 3.0 user guide](#) (Natural England Joint Publication JP039, July 2021) includes the following definition of additionality.

*The need for a compensation measure to provide a new contribution to conservation, additional to any existing values, i.e. the conservation outcomes it delivers would not have occurred without it.*

- 3.32 Leading Industry body the Chartered Institute of Ecology and Environmental Management (CIEEM) has produced the document [Biodiversity net gain. Good practice principles for development. A practical guide \(2019\)](#). The document defines additionality as:

*A property of measures to achieve BNG, where the conservation outcomes it delivers are demonstrably new and additional and would not have resulted without it.*

- 3.33 The same definition is repeated in BSI Standards Publication BS 8683:2021 "Process for designing and implementing Biodiversity Net Gain — Specification", but it adds:

*If several biodiversity projects are taking place within one area, good practice requires the BNG design to be clearly additional to the other projects, and to maximize complementary interactions with other projects.*

3.34 The checklist on designing for BNG in the CIEEM guide states:

*Demonstrate that BNG outcomes deliver more than legal requirements.  
Demonstrate that the BNG outcomes are additional when several activities are undertaken on the same site.*

3.35 [Biodiversity Net Gain Good practice principles for development](#) (2016) produced by CIEEM, Construction Industry Research and Information Association (CIRIA) and Institute of Environmental Management & Assessment (IEMA) includes the following principle:

*Principle 7. Be additional: Achieve nature conservation outcomes that demonstrably exceed existing obligations (i.e. do not deliver something that would occur anyway).*

3.36 As the above sets out, BNG works must be additional to biodiversity measures that would have otherwise been undertaken due to an obligation stemming from a policy or legal requirement. This would most often refer to compensation and mitigation related to protected habitats or sites. This is distinct from compensation, provision or enhancement works for ordinary (unprotected) habitats undertaken in the pursuit of BNG in accordance with the mitigation hierarchy.

3.37 By excluding obligatory habitat works from BNG, the mitigation hierarchy is preserved and development is guided away from impacts on protected sites, habitats and species. If protected habitat could be harmed or lost with the damage compensated through provision of BNG habitat that would have to be provided anyway, the incentive to avoid or reduce harm to protected habitats would be lessened.

3.38 It should be noted that obligatory ordinary works that are not “biodiversity works” can count towards BNG – the NPPG (Natural Environment, paragraph 23) states that sustainable drainage systems (SuDS) can count towards BNG. SuDS are not biodiversity works (though they can have biodiversity value) so need not be excluded from BNG. For this reason, the exclusion from BNG applies only to obligatory measures whose primary purpose is biodiversity. Indeed, a major benefit of the BNG approach is the potential to “green” new developments by ensuring the components of those developments (buildings, open spaces, SuDS etc) are designed in such a way as to provide the greatest benefit to biodiversity.

3.39 The principle of additionality has particular relevance for SANGs and irreplaceable habitats, as discussed later.

#### *The need for a BNG policy*

3.40 In order to comply with the NPPF (paragraph 179 b) the plan must include a policy that seeks measurable BNG from new developments. The most effective policy would be one that aligns with the emerging national methodology as this will provide consistency with other local authorities and an approach that developers and decision makers will become familiar with.

- 3.41 The NPPG (Natural Environment paragraphs 6, 10 and 12) make it clear that BNG should form a part of wider planning for green infrastructure provision in development plans. Paragraph 21 explicitly states “Plans... can be used to set out a suitable approach to [biodiversity net gain], how it will be achieved, and which areas present the best opportunities to deliver gains.” Paragraph 22 adds “The National Planning Policy Framework encourages net gains for biodiversity to be sought through planning policies...” This makes it clear that local plan policies can and should address BNG rather than relying on national policy and legislation.
- 3.42 As a result of the above, the ‘no policy’ option presented in the Preferred Options consultation is not considered compliant with the NPPF or NPPG.
- 3.43 Additionally, the commencement of the national BNG approach through regulations is outside the control of the Council and it is possible that it may never commence, which would mean biodiversity in Surrey would be likely to continue to decline. Without a local policy, the result could be an outcome that would not accord with either the NPPF or national targets for reversing biodiversity decline.
- 3.44 Alongside this, the severity of biodiversity decline means that it is vital that the operation of BNG is effective and targets the right habitats and species. This is achieved through the policy where it requires consistency with the biodiversity policies in the LPSS and LPDMP, which in turn are consistent with strategies and information relevant to the local context.
- 3.45 Defra have confirmed the need for BNG policies at events attended by officers where they have stated that the Biodiversity Metric should be considered a starting point for, but not a substitute for, a local approach to net gains. This accords with the NPPF at paragraph 9 which requires planning policies to guide development towards sustainable solutions, taking local circumstances and opportunities into account.

#### Alignment with the national approach

- 3.46 The biodiversity net gain section of policy P6/P7 aligns with the proposed national approach almost entirely as it adopts or allows for the same methodology, the same biodiversity metric and the same exemptions. Preferred option P7 originally proposed to diverge from the nationally proposed approach by not exempting self-build units from the requirement. However, this difference has not been carried over to policy P6/P7; the definitions section clarifies that any development that is not exempted from the requirement to achieve a biodiversity net gain by national policy or legislation will qualify for the net gain requirement in the policy. This accords with representations received by developers and the Homebuilders’ Federation who wanted to see alignment with the national approach and reflects the very limited impact that removing the exemption would have.

#### Justification for a 20% BNG

- 3.47 The policy does not align with the proposed national approach in terms of the level of BNG that is sought. The preferred options consultation presented three options for P7: Biodiversity Net Gain: 1) adopt a BNG standard of 20% (the preferred option), 2) have no policy and leave BNG to the proposed national legal obligation set out in the Environment Bill or 3) adopt a BNG standard of 10%. The BNG options of 10% and

20% were selected because these were the options the government set out in its consultation on mandatory BNG and for which a supporting impact assessment had set out evidence on achievability and costs<sup>4</sup>.

- 3.48 The option of 10% was ultimately rejected at the regulation 19 stage because the impact assessment indicates that there cannot be full certainty that genuine BNG will be achieved, rather than simply no net loss, if the minimum BNG is set at 10% (see page 81 of the impact assessment). The impact assessment explains that confidence of achieving BNG from development in general increases as the percentage increases, and that the 10% level represents a trade-off between certainty and costs. The setting of an appropriate national target must necessarily result in a more cautious approach as it is required to be viable for all parts of the country, and viability is likely to vary significantly between areas. This is not the case when looking to set a local requirement where the cost implications can be more accurately assessed. The viability testing of the LPDMP demonstrates that a standard of 20%, when combined with other policy requirements, will not undermine the delivery of the plan. Additionally, a policy that failed to prevent the decline, or achieved merely no net loss rather than a net gain, would not comply with the NPPF.
- 3.49 As Surrey has suffered a biodiversity decline that is more pronounced and severe than England as a whole (see paragraph 2.22), and as the borough's environmental, social and economic health depends on its natural capital, it is vitally important that a genuine net gain is achieved rather than no net loss in order for the plan to be considered sustainable across all three dimensions. This provides further justification for seeking a greater level of BNG.
- 3.50 The Surrey Nature Partnership has issued a position statement that recommends that Surrey Local Planning Authorities (LPAs) adopt a BNG standard set at a minimum of 20%<sup>5</sup>. Natural England also supported the proposed standard when consulted prior to the regulation 19 consultation.
- 3.51 Other LPAs in the UK have come to the same conclusion regarding the level of net gain:
- Lichfield District Council already sets a 20% net gain in biodiversity for development proposals that result in habitat loss,
  - The following planning documents set or propose a BNG standard of 20%
    - The Oxfordshire Plan July 2021 (Regulation 18 part 2).
    - Swindon Borough Local Plan 2036 Revised Proposed Submission Draft July 2021.
    - Swale BC Local Plan Review 2021 (Regulation 19 consultation Feb-April 2021).
    - The draft Greater Cambridge and Cambridge City Shared Planning & Biodiversity SPD (consultation July to September 2021, 20% BNG is

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<sup>4</sup> Defra (2019) Biodiversity net gain and local nature recovery strategies Impact Assessment (Final).

Available online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/839610/net-gain-ia.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839610/net-gain-ia.pdf)

<sup>5</sup> See Recommendation for 20% Biodiversity Net Gain in Surrey, November 2020 available at <https://surreynaturepartnership.org.uk/our-work/>

- presented as an aim based on goals set by the Oxford to Cambridge Arc development vision).
- Barrow-in-Furness' Biodiversity and Development SPD 2018 (adopted)
  - Stafford BC's Biodiversity and Development SPD 2020 (adopted)
  - South Cambridgeshire District Council aspires to achieve 20% biodiversity net gain through development<sup>6</sup>
  - The Kent Nature Partnership is promoting a 20% BNG standard for Kent LPAs.
- 3.52 The number of authorities that have arrived at the same conclusion over the most appropriate level of BNG would suggest that the reasoning for seeking a 20% BNG is valid.
- 3.53 Some respondents have referred to the government's aim, and the general desirability of, maintaining a level playing field across the country. The government, in its "Net gain: summary of responses and government response July 2019" document<sup>7</sup> (page 9), states "The proposed 10% would be a mandatory national requirement, but should not be viewed as a cap on the aspirations of developers that want to voluntarily go further or do so in the course of designing proposals to meet other local planning policies". It should be noted that there is no provision in the Environment Act that prohibits LPAs from setting a higher percentage and there is no indication in the NPPF 2021 that LPAs should refrain from setting a higher standard. As a result, it appears the intention is that Local Plan policies should be able to promote higher BNG standards.
- 3.54 Given the position of the SyNP, it seems likely that adopting a standard of 20% is most likely to result in a level playing field across Surrey. Further, given the number of LPAs seeking to implement a 20% BNG it would seem that even if Surrey authorities introduce 10% requirements it may not in fact result in a level playing field across England.
- 3.55 Respondents to the LPDMP consultation raised questions about the deliverability of the proposal and the location of offsetting sites that will enable developments to achieve 20% BNG where this is not possible entirely through onsite measures. Since the consultation was completed, at least two organisations have signalled their intention to set up habitat banks in the borough and have met with the Council to discuss the proposals. The Council is also exploring options for habitat banks on its own land.

*Previously Developed Land exemption*

- 3.56 The national mandatory requirement for BNG is proposed not to apply to previously developed land unless the land contains protected or priority habitats. Some stakeholders raised the issue that the exemption for previously developed land (PDL) was not clear, i.e. whether the existence of protected or priority habitats would mean the whole site would have to achieve BNG or just the area the habitats covered. As a result, the definitions have clarified that where sites contain a mixture of PDL and

<sup>6</sup> See Doubling Nature Strategy, South Cambridgeshire District Council, 2021

<sup>7</sup> <https://www.gov.uk/government/consultations/biodiversity-net-gain-updating-planning-requirements>

greenfield land the exemption will only apply to the previously developed part of the site. This is both the most logical approach and is consistent with the brownfield land register approach which limits the inclusion of land on the register to only areas of previously developed land (as per the NPPF definition) and not whole sites that include some brownfield and some greenfield land.

- 3.57 It also became apparent that it was not clear whether the existence of protected or priority habitats on a PDL site would mean that BNG would be required on a site wide basis (i.e. that the whole site would then lose its exemption). Clarification was added into the policy that where protected or priority habitats or an assemblage of species with an otherwise demonstrably high biodiversity value were present on site that the requirement for BNG would apply to those features as this is the most logical and reasonable approach.
- 3.58 The policy states that the exemption will not apply to sites that contain an assemblage of species with an otherwise demonstrably high biodiversity value, as well as sites that contain priority species and habitats. The removal of the exemption for PDL sites that contain priority habitats reflects the national approach, which also removes the same exemption. It is considered that priority species should be treated in the same way as priority habitats as both have the same status in the emerging Surrey approach to nature recovery under development by the SyNP, and priority species are valuable components of the borough's ecology. Additionally, during engagement with the SyNP it was highlighted that an assemblage of species can have high biodiversity value even if the individual component species would not.

*Support for biodiversity sites and guidance on SANGs*

- 3.59 Paragraph 17 of the policy states that the creation of biodiversity sites will be supported where these are well located and will be appropriately managed in order to align with local, regional and national strategies and provide best biodiversity value. It is expected that the implementation of BNG will require the use of habitat banks. In order to ensure that the benefits of habitat banks are retained locally, the policy supports proposals to create them within the borough. However, it is acknowledged that the amount of development funding for habitat banks, and therefore the number of habitat banks that can be brought forward, will be limited. As a result, it is important that the best sites are brought forward as habitat banks, meaning the sites that would best support biodiversity recovery in line with biodiversity policies and nature recovery strategies, and paragraph 17 reserves support for those sites.
- 3.60 The borough hosts a number of SANGs and further SANGs are expected to be delivered by strategic sites and other landowners. SANGs are semi-natural spaces that are provided in perpetuity and the Council acknowledges that SANGs can be appropriate sites for BNG works where this would not interfere with the SANG's primary purpose as a recreational site. Key benefits include:
- the longevity of the site - far beyond the 30 year timeframe for BNG habitats set out in the Environment Act,
  - BNG works could make SANGs more attractive, improving their primary purpose, and
  - many SANGs are well placed in terms of co-location with BOAs and have the potential to host priority habitats.

- 3.61 However, as SANG works are a form of mitigation for impacts on a legally protected and priority habitat (the Thames basin heaths), it is important that SANG works are not double counted as BNG works. It is also important that BNG works do not interfere with the primary purpose of the SANG as recreational land, and that, conversely, recreational use does not harm any BNG habitat works.
- 3.62 SANG owners have already expressed an interest in using SANG land for BNG, and with the obvious benefits it is anticipated that tension between SANG and BNG works and double counting of works could become a significant issues. Natural England has updated its SANG guidance to set out how SANG and BNG can coexist while preserving the principle of additionality, and this guidance is reinforced through the supporting text commentary on SANGs. The paragraph sets out the requirement to clearly differentiate between the two sets of works so that decision makers can ensure works are not double counted and also be clear that SANG works will meet the required standard without additional BNG.
- 3.63 The final part of the paragraph seeks to prevent the unreasonable revision of management plans for existing SANGs to reduce their quality in order to make space for BNG works (i.e. to move works from SANG into BNG). The Council is the competent authority under the Habitats Regulations and in order to grant consent for new homes it must apply the precautionary principle and be certain that SANGs will be effective. The effectiveness of SANGs largely relies on their attractiveness to potential SPA visitors, who are seeking a wilderness value commensurate with the SPA. As a result, reducing the quality of SANGs (distinct from BNG on SANGs) could result in their effectiveness being compromised and consequently harm to the SPA or the double counting of SANG works as BNG works. Whilst the outcome would be the same regardless of whether works are undertaken as SANG or BNG, BNG works are only secured for 30 years while SANGs must be provided in perpetuity, so after 30 years the attractiveness of a SANG that relies on BNG works would be in doubt. Additionally, relying on BNG works to make SANGs attractive enough to be effective would not accord with the principle that BNG works must be additional to compensation works. The Council has spent a great deal of time and resources working with applicants who are bringing forward new SANGs in order to arrive at an acceptable proposal and re-running those processes through an application to amend an existing SANG management plan would likely result in similar costs in time and effort.

## Policy P8/P9: Protecting Important Habitats and Species

### Mitigation hierarchy and important habitats

- 3.64 The mitigation hierarchy is long established best practice in the field of development ecology. Additionally, the approach is enshrined in the new national approach to BNG. As a result, the policy presents the mitigation hierarchy in the first paragraph of policy P8/P9 to ensure that important habitats are protected.
- 3.65 There was concern by some respondents to the Preferred Options consultation over the reference to the use of barriers to protect sensitive habitats as it could lead to habitat fragmentation and conflict with other policies designed to improve permeability for wildlife. This point was agreed so it was clarified in the supporting text that barriers should not impede the spread of plants and wildlife. The requirement is considered necessary because the Council has experience where habitats it manages have been damaged by recreational use or other human activity e.g. where informal cut throughs have been created through ancient woodland.
- 3.66 The list of important habitats (irreplaceable habitats, priority habitats, habitats hosting priority species, sites designated for their biodiversity value and all aquatic habitats) is largely drawn from national policy (irreplaceable habitats and designated sites) and strategy produced by the SyNP (priority species and habitats). Aquatic habitats have been included in the list for several reasons:
- The borough hosts two large rivers/canals and a number of tributaries which make a very significant contribution to biodiversity, acting as key green corridors. Rivers and other larger waterbodies are protected by policy P12: Water Quality, Waterbodies and Riparian Corridors but it is important that a policy that protects biodiversity also references the need to protect these water habitats to highlight their importance.
  - Smaller water features like ponds, ditches, streams and springs are mostly not covered by Policy P12 (only the very largest examples may be). However, areas of standing water and small bodies of running water are very important for biodiversity. They are often very rich habitats, particularly important for aquatic invertebrates, wetland plants and amphibians and are also used by a variety of mammals, birds and fish. Small water bodies support at least as many invertebrate species as rivers and considerably more uncommon and rare species<sup>8</sup>. As a result, they are considered vital to the health of the borough's ecology and their enhancement will be a necessary step to reverse the decline in biodiversity.
  - Features like ponds are under threat – almost 70% of the UK's natural ponds have been lost.
  - The EA stated that the policy on biodiversity in new development (now P6/P7) should also cover ecological features such as ponds where they don't qualify as Priority Habitat and therefore aren't covered already, but provide an opportunity to be enhanced so that they do qualify. The enhancement of ponds is covered adequately by the biodiversity net gains approach coupled with the mitigation

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<sup>8</sup> Ponds, Pools and Lochans (Defra, undated) available at <http://adlib.eversite.co.uk/adlib/defra/content.aspx?id=000IL3890W.17UT2FPLMOY38B>

hierarchy which promote enhancement of onsite habitat and further policy on enhancement is not necessary. However, it is necessary that ponds should be protected in the first instance due to their importance and to ensure opportunities for enhancement can be realised.

- Small water features provide other environmental services including flood mitigation, climate change adaptation (urban cooling and drought mitigation). If the features are lost, these problems would be exacerbated.

### **Irreplaceable habitats**

- 3.67 The policy prevents development that would harm irreplaceable habitats except where there are wholly exceptional reasons and a suitable compensation strategy exists. This accords with the NPPF at paragraph 180c which states:

*development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons<sup>63</sup> and a suitable compensation strategy exists...*

*Footnote 63: For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.*

- 3.68 It is important to note that the existence of wholly exceptional reasons and of a suitable compensation strategy are two separate and independent tests, which is clarified in the policy.

#### Wholly exceptional reasons

- 3.69 The “wholly exceptional reasons” test must reasonably include the balance between benefit and harm. This is supported by NPPF footnote 63 which indicates that public benefit will be a consideration in the test. As a result, the policy clarifies that the benefits of the development must be exceptional and provide benefit that extensively outweighs the loss or harm.

#### Exclusion of compensation from the test

- 3.70 The policy excludes the possibility of compensation from the test of whether exceptional reasons exist.
- 3.71 The NPPG supports this approach where it applies to Ancient Woodland (an irreplaceable habitat) at Natural Environment paragraph 33 and the same test should logically apply to other irreplaceable habitats:

*When assessing whether ‘wholly exceptional reasons’ exist that may justify a loss or deterioration of ancient woodland, ancient trees or veteran trees, it will not be appropriate to take any compensation measures into account. These should be considered only once the existence of ‘wholly exceptional circumstances’ has been ascertained.*

- 3.72 Compensation must be excluded from the assessment of whether ‘wholly exceptional reasons’ exist as compensation measures are by definition required to mitigate harm

only rather than provide benefit. The mitigation of harm cannot provide an exceptional reason to grant permission as the same harm can be avoided simply by refusing permission, nor can it provide exceptional benefit. A large number of developments could provide compensation so this approach would undermine the test of exceptionality. Furthermore, allowing compensation to become a reason to harm or lose irreplaceable habitats would increase the number of circumstances where harm would be permissible and eventually result in the loss of large amounts of rare habitat permanently (or at least for a very long time) which would not accord with national and local habitat recovery strategies. Instead, the policy requires proposals to pass the “wholly exceptional reasons” test when balanced against the harm caused by loss of irreplaceable habitats without compensation.

#### Double counting of compensation and other measures

- 3.73 The policy clarifies that compensation must be additional to other required habitat works including BNG works. This is a key principle of the BNG approach (see ‘Additionality’ earlier in this section).
- 3.74 Habitat works other than compensation works (including BNG works) must not be counted as compensation as this would reduce the disincentive for harm to irreplaceable habitats and would not accord with the mitigation hierarchy - if BNG works are going to be provided regardless, and these are allowed to compensate the loss of irreplaceable habitats, there will be less incentive to design schemes to avoid harm to irreplaceable habitats. The importance of irreplaceable habitats means that their harm or loss should not be conflated with the ordinary losses of habitat that the BNG approach and methodology has been created to address and compensate for.

#### Level of compensation

- 3.75 The policy states that compensation must be suitable and address the level of harm predicted by delivering appropriate and proportionate compensation in terms of quality and quantity.
- 3.76 Some respondents wanted tough compensation requirements to be set through the policy, a compensation rate, or an outright ban on any harm in any circumstances. Irreplaceable habitats are diverse so it would not be appropriate to set a single rate for all habitats and it would be onerous to develop compensation rates for a range of different habitats. Further, the level of compensation may depend on the quality of the area of habitat that is lost and not just its type and quantity. An overly tough compensation requirement or a total ban on harm would not accord with the NPPF which does allow harm or deterioration there the “wholly exceptional” test is met and suitable compensation is provided. However, compensation must not be too low as this would remove the disincentive for seeking to harm irreplaceable habitats. As a result, the policy leaves compensation to be considered on a case-by-case basis but does require it to be suitable for the level of harm, appropriate, proportionate and to take both the quality and quantity of the harmed habitats into account. This is the most reasonable approach.

#### Definition and identification of irreplaceable habitats

- 3.77 The NPPF defines irreplaceable habitats as:

*Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity.*

- 3.78 The Council has experience whereby planning applications have suffered delays due to disagreements over whether habitats are irreplaceable or not. Therefore, the policy provides additional guidance on how to assess irreplaceability as follows:

*A habitat will be considered to be irreplaceable if it meets the definition in the NPPF glossary or guidance issued by the Surrey Nature Partnership, or if it is identified as irreplaceable in the Local Nature Recovery Strategy, or it is on land identified in an established inventory, such as the Revised Ancient Woodland Inventory (RAWI).*

- 3.79 In order to smooth the development management process, and to align with the NPPF (paragraph 15) requirement for the planning system to be plan-led, the policy sets out additional factors that will be considered in assessing whether habitats are irreplaceable. Inventories of irreplaceable habitats have done much of the identification work up-front, as required in a plan-led system, and the future Local Nature Recovery Strategy will likely also identify irreplaceable habitats. In the interim, the SyNP has established guidance tailored to local habitats which will further reduce ambiguity.
- 3.80 The supporting text then goes further to list known local irreplaceable habitats and provide guidance setting out how these should be identified.
- 3.81 The policy and the supporting text together will reduce the potential for misunderstanding or disagreement over which habitats should be considered irreplaceable and consequently prevent delays to planning applications.

## **Policy P12: Water Quality, Waterbodies and Riparian Corridors**

- 3.82 As detailed earlier in this paper, the water environment is fundamental to the ecological health of the borough, but maintaining clean and adequate water stocks are also fundamental to human health, and in turn to the continuing prosperity of society and the economy. The borough has an extensive and varied water environment, including numerous aquifers, rivers, lakes, ponds and reservoirs. Groundwater is a significant component, with approximately 30% of the borough located on principle aquifers and the presence of 14 source protection zones (SPZ).
- 3.83 Much of the water environment is subject to legislative protection, and covered by strategies and targets set out in documents such as The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WER), the River Basin Management Plan for the Thames river basin district (RBMP), the riverine BOA policy statements, LPSS policy ID4, the draft Wey Catchment Management Plan (WCMP) 2018 and Environment Agency policy statements. These documents provide a comprehensive and detailed framework for the protection and recovery of the water environment and it is important that LPDMP policy aligns with them. Of note are the catchment-based approaches set out in the RBMP and WCMP – the water environment should be considered holistically with an understanding that water features are linked and have impacts upon one another.
- 3.84 The Environment Agency (EA) is the prime agency responsible for water habitats and resources. The EA's RBMP establishes the ecological baseline for the Thames catchment and sets out the necessary action to achieve 'good' status in the waterbodies it covers, as required by the WER (which incorporates the requirements of the Water Framework Directive into law following the UK's exit from the EU). The WER prevents not only deterioration in the status of relevant waterbodies, but also actions that would inhibit their improvement and/or the achievement of WER objectives. Development proposals that are adjacent to or near WER waterbodies represent key opportunities to deliver, or assist in the delivery of, WER objectives and RBMP projects. Alongside this, the connected nature of the water environment means that it is important that development proposals that could have impacts on non WER water features also protect and enhance those features.
- 3.85 Within the NPPF the water environment is intrinsically linked with a number of themes including water resources, open space/recreation and amenity, flood risk, biodiversity, health, climate change adaptation and mitigation and community wellbeing. Improving the water environment is also likely to be key in achieving BNG and reversing the national and local declines in biodiversity.

### **Paragraphs 1-3**

- 3.86 In order to deliver national and local targets for habitat restoration, paragraphs 1-2 of the policy set out requirements that will prevent deterioration of the water environment, and further, to require developments that are capable of delivering improvements to do so. Where waterbodies are subject to the WER and RBMP, it requires proposals to align with the RBMP to help deliver the projects and objectives it contains. It stands to reason that development proposals should assist the delivery

of the RBMP where they are able to as this is the framework that will deliver WER objectives.

- 3.87 The status of groundwater bodies is partly measured in quantity, and the ecological health of surface waterbodies is dependent upon good flow and function, which is also affected by quantity. As a result, paragraph 3 prohibits developments that would have high water usage from abstracting water from the environment for all their water requirements.
- 3.88 Paragraph 3 also seeks to prevent such developments relying on the public water supply, partly because of the high water stress in the borough but also because public water supplies are abstracted from ground and surface water bodies.
- 3.89 Paragraph 3 excludes residential development in order to avoid the tension with strategic allocations that could arise if all the homes in a site allocation are taken as a single water user. The Council has already addressed water efficiency in new dwellings (see next paragraph) and implements the highest standard of water efficiency allowed within the planning system so new dwellings should not be treated as high water users. The borough's water supply companies, who are responsible for water management plans that include demand and supply side measures that seek to ensure that water demands can be met, were consulted regarding the scale of residential development in the preparation of the LPSS.
- 3.90 Regarding residential development, the Council has already implemented 110 litre standard water efficiency standard set out in the "Technical Housing Standards" through policy D2 of the LPSS 2019 in order to improve water efficiency in new dwellings. Alongside this Policy D2 and proposed policy D12 contain general water efficiency measures that promote water efficiency further in new homes, and also in non-residential development.
- 3.91 Paragraph 3 exempts essential infrastructure as, being essential, it would not be reasonable to restrict such developments.

#### **Development affecting watercourses**

- 3.92 As set out above, preserving and restoring the natural flow and function of watercourses is key to improving the water environment and can deliver additional benefits such as flood mitigation. Paragraphs 4 - 8 of the policy set out requirements that will deliver this.
- 3.93 Paragraph 5 seeks to protect riparian habitats adjacent to watercourses through the use of a buffer zone. The supporting text for Policy ID4 of the LPSS 2019 includes a reference to an 8-metre buffer zone for main rivers. Since that policy was developed, EA guidance has changed to 10-metres. The buffer zone guidance was received too late to be included in policy in the LPSS, but the requirement has been included in LPDMP policy rather than supporting text as it is a fundamental measure to improve the ecological health of main rivers.
- 3.94 The buffer is likely to have benefits beyond ecological health and flooding by providing amenity and recreation opportunities through improved public access in accordance with the NPPF and, when applied to the River Wey, Policy D11: The Corridor of The River Wey and Godalming Navigations. Additionally, watercourses

are, or are capable of becoming, vital green corridors that play an important and strategic role in connecting habitats across the borough, particularly through settlements.

- 3.95 The EA, in support of the proposed buffer, set out the following benefits.
- This width of buffer provides the minimum width of habitat needed to provide for the functioning of wildlife habitats, while being able to facilitate informal access for enjoyment of the river.
  - This width also ensures that the river is buffered from land-based activities, thereby avoiding shading from buildings, reducing the levels of diffuse pollution reaching the watercourse and allowing the watercourse to adjust its' alignment as it naturally erodes and deposits without the need for damaging bank protection.
  - Artificial lighting disrupts the natural diurnal rhythms of a range of wildlife using/inhabiting the river and its corridor habitat. River channels and waterbodies with their wider corridors should be considered Intrinsically Dark Areas.
- 3.96 Regarding the final bullet point, Policy D10a: Light Impacts and Dark Skies includes protection for natural habitats from light pollution.
- 3.97 The EA's remit covers main rivers and stipulates a 10m buffer. However, the same reasoning that supports a buffer for main rivers will also apply to ordinary watercourses. However, the plan acknowledges that a full 10m buffer will not always be appropriate for watercourses of all scales so requires an 'appropriate' buffer for ordinary watercourses that will be considered on a case-by-case basis. The supporting text clarifies that 10m should be provided where possible, as this reflects the importance of watercourses to the borough's ecology and the minimum standard set by the EA, which is considered highly desirable.

## 4. Next steps

- 4.1 The draft Local Plan policies for the natural environment covered in this topic paper respond to the requirements of national policy, the findings of the evidence base review and findings from the Regulation 18 consultation. This draft topic paper accompanies the proposed submission Local Plan: Development Management Policies for public consultation. For more information, please visit <https://guildford.inconsult.uk/LPDMP21/consultationHome>.

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